

ECONOMIC SANCTIONS IN PERSPECTIVE: DO PROBATIONERS
CHARACTERISTICS AFFECT FEE ASSESSMENT, PAYMENT, AND
OUTCOME?

By .

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ABSTRACT

Policymakers who struggle with budgetary issues are increasingly interested in the role of economic sanctions in criminal justice. This longitudinal study investigated characteristics of probationers which may explain the type and amount of economic sanction (e.g., supervision fees, fines, attorney fees, restitution) imposed on and paid by probationers from a large metropolitan adult probation jurisdiction. The effects of economic sanctions and client characteristics on probation outcome were also evaluated. Contrary to expectation, none of the clients' legal or social characteristics predicted assignment of either restitution or attorney fees. Moreover, persons with unstable employment histories were assessed higher miscellaneous fees and fines than persons with stable employment histories. However, with respect to the total dollar amount of economic sanctions, black and Hispanic probationers were assessed and paid significantly less fees than whites. There was also evidence that membership in a financially disadvantaged group, employment problems, and higher fees contributed to failure on probation. Specific policy recommendations in the areas of financial screening, administrative procedure to improve monitoring and evaluation of fees, and alternatives to economic sanctions for the financially disadvantaged are offered.

ECONOMIC SANCTIONS IN PERSPECTIVE: DO FELONY PROBATIONERS CHARACTERISTICS AFFECT FEE ASSESSMENT, PAYMENT, AND OUTCOME?

INTRODUCTION

Historically, criminal justice agencies have been responsible for collecting various types of fees imposed by courts (Sasfy, 1980). Typical economic sanctions include fees for room and board in residential settings, probation supervision fees, fines, and court costs, and compensation for victims. According to Baird, Holien, and Bakke, probation agencies in 24 states assess fees for their services (1986). The use of fines to help finance local court and corrections operations is almost universal. A nationwide survey found that "judges in courts of limited jurisdiction report they impose fines, either alone (36 percent) or in combination with another penalty, in an average of 86 percent of their sentences" (Hillsman, Mahoney, Cole, & Auchter, 1987:2). Since dependency on service fees, fines, and court costs to improve and sustain the level of services provided by the department appears to be growing (Wilcox, 1985:1-5; Irwin, 1987:61-62; Wheeler, Macan, Hissong & Slusher, 1988:17), and public demand to compensate victims has increased, a detailed analysis of the assessment and payment of economic sanctions is warranted.

Although this is an important issue with several policy implications, there has been no attempt to evaluate the relationship between client characteristics and type, number, and total dollar amount of economic sanctions imposed on and paid by probationers. Also, there is minimal information available on the impact of economic sanctions on deterring crime or influencing probation outcome. Some scholars (Van den Haag, 1975) contend that while fines may deter the poor from wrongdoing, economic sanctions may

have little or no effect on the rich. These are important issues to the criminal justice community for at least three reasons: the assignment of economic sanctions may have adverse effects on disadvantaged groups, the inability to enforce compliance may impair the agency's power to accomplish its mission, and such sanctions may actually increase criminal penalties in certain groups.

Role of Clients' Legal and Social Characteristics in Assignment of Economic Sanctions. While state statutes generally establish economic sanctions to be in accordance with the nature of the crime, they often allow judges considerable discretion. Hillsman and Greene (1988:36) report that many American judges tend to "depress fine amounts so that they cluster near the bottom of the statutory range" because they are concerned with the issues of equity and collection. A judge may also use information such as employment status and income level to assign sanctions a defendant can "afford". According to Hillsman, et al. (1987:6-7) this is one feature of the Scandinavian "day-fine system", a program which permits judges to impose monetary punishment commensurate with, in addition to the offense, the offender's economic circumstances.

Other criminal attributes may influence type of economic sanction assessed. The type of offense is expected to play a major role in the types of sanctions which are imposed. A person convicted of a theft offense is likely to be required to pay restitution to the victim, whereas defendants with a drug or alcohol dependency may be required to attend a treatment center and economic sanctions will offset some of the costs of their treatment. A person's criminal history may influence the leniency or severity of a judge's decision. A first time offender may not get as severe a sentence, both in terms of criminal and economic sanctions, as someone with an extensive criminal history. It is expected that a more extensive history will increase the likelihood of economic

sanctions. However, judges may use employment or income information to determine the actual amount of sanctions assessed.

Effects on Agency Mission. As previously stated, studies have shown that when fees are charged for probation supervision and set aside by law for probation services, these funds are utilized by the department to improve or sustain the level of services provided by the department (Wilcox, 1985:1-5; Irwin, 1987:61-62; Wheeler, et al., 1988:17). For example, funds generated by supervision fees may be used to recruit additional staff and support programs such as intensive supervision. When departments face budgetary shortfalls due to lower tax revenues or subsidies, these funds may be used to help maintain existing levels of service. The inability to enforce compliance may impair the agency's power to accomplish its mission.

Impact of Non-Compliance on Criminal Penalties. Failure to pay financial obligations mandated by the court can ultimately lead to probation revocation and incarceration. Economic sanctions initially set beyond a person's ability to pay may start a process that eventually leads to revocation of probation and absconding from the jurisdiction of the court. Using indicators such as monthly delinquency rates and negative terminations, an analysis of 1987 Harris County data showed that higher supervision fees did *not* result in a corresponding rise in negative outcomes (Wheeler, Hissong, Slusher, & Macan, 1988). An alternative explanation is the possibility of a relationship between the social and legal characteristics of probationers and probation outcome. These sanctions may have adverse effects on disadvantaged groups.

METHODOLOGY

To understand client factors influencing amount of fees assessed and paid for various types of economic sanctions and the relationship between the social and legal characteristics of probationers and probation outcome, an empirical investigation

using data from the Harris County Adult Probation Department was undertaken.

Description of Agency. The Harris County Adult Probation Department is the largest probation department in Texas. Located in Houston, the agency is responsible for supervision of 35,000 felony and misdemeanor offenders. By law the courts may impose a maximum monthly supervision fee of \$40 (Texas Code of Criminal Procedure, Art. 42.12 and 42.13). The courts also order the payment of fines, restitution for victims, attorney costs, and other fees (e.g., crime stoppers, child support). During the fiscal 1987, probationers paid \$6.2 million in supervision fees, \$4.4 million in fines, \$3.4 million in restitution fees, and \$355,000 in court costs and attorney fees. The mode of payment is primarily monthly installments collected by the probation department. Payment preference is governed by individual judicial philosophy and probation officer discretion. All supervision fees are allocated to the department's budget for staff salaries. Indirect costs are incurred by the county, and additional state subsidies are paid to the department by the Texas Adult Probation Commission on a probation per capita basis.

Description of Economic Sanctions Imposed on Sample. Felony probationers were subject to five possible economic sanctions: supervision fees, restitution fees, attorney fees, fines, and other fees (e.g., crime stoppers, court costs). The distribution of fee assessments appear in Table 1. Total assessments for felony probationers was \$402,718, representing an average total financial obligation of \$1,633 per probationer.

Insert Table 1 here

Sample. A 15% (N=246) randomly selected sample of the probation population processed by the Harris County Criminal Courts between May 1984 and August 1984 was tracked for three and a half years.

Analysis. Discriminant and regression analyses were used to examine this data. A total of 14 variables were used in appropriate combinations across all analyses.

Client Characteristic Variables. Eight variables described clients' social and legal characteristics: type of crime, or charge (person, theft, or drug), number of prior felony convictions (none or at least one), employment history (partially employed during previous six months or stable employment during the previous six months), marital/family relationships (stable or unstable), and race (white or nonwhite). Both employment history and marital/family relationships were determined by the probationer's risk/needs classification score. Although no hypotheses specific to their influence were proposed, the variables age and sex were included in these analyses.

Economic Sanction Variables. Five variables were specific to economic sanctions: monthly supervision fee assessed, total amount due, attorney fees, restitution fees, miscellaneous fees and fines, and the number of sanctions assessed. The variable total amount due represented the sum of attorney fees, restitution fees, miscellaneous fees and fines, and total supervision fees due. Total supervision fees due was computed by multiplying monthly supervision fees assessed by number of months on probation. The number of sanctions assessed ranged from one to five.

Probation Outcome Variable. The variable describing probation outcome had one of two values. Probationers who had their probation revoked for a technical violation, law violation or absconding were classified as unsuccessful, as well as those for whom termination had been unsuccessful. The outcome of all others was determined to be successful.

RESULTS

Prediction of Economic Sanction Assignment. Discriminant analyses were conducted to identify variables that predict whether

a probationer was assigned a particular economic sanction by the court. Three types of sanctions were analyzed: restitution fees, attorney fees, and other miscellaneous fines and fees. Almost all probationers were assessed supervision fees (see Table 1); therefore, a discriminant analysis was not conducted for this type of sanction.

Eight predictors were included in each analysis: charge, prior felony convictions, employment history, sex, race, age, marital/family relationships, and monthly supervision fee assessed. Note that since those with drug-related crime convictions in this sample were not assessed restitution fees, only those convicted of crimes against the person or theft were included in the analysis of this fee. Also, in order to account for the potential effects of other sanctions on the one being analyzed, the amounts assessed (if any) for the other two sanctions were included as the ninth and tenth predictors (e.g. attorney fees and other miscellaneous fines and fees were included as predictors of restitution fee assignment, etc.)

The results of the two-group stepwise discriminant analyses showed that none of the variables was a statistically significant predictor of either restitution or attorney fee assignment. The analysis for miscellaneous fees and fines assignment, however, yielded a significant discriminant function (Wilks' Lambda = .96, $p < .01$). The variables retained by the stepwise function were sex and *employment history*. Frequency analyses showed that 26.9% of female probationers (N=52) and 48.5% of male probationers (N=194) were assessed miscellaneous fees and fines. Therefore, male probationers were significantly more likely to be assessed miscellaneous fees and fines. Analysis of the employment history variable revealed that 52.1% of those with unstable employment histories (N=48) were assigned miscellaneous fees and fines, whereas 41.9% of those with stable employment histories (N=198) were assigned these fees. Therefore, probationers with an unstable

employment history were more likely to be assessed miscellaneous fees and fines.

Prediction of Total Amount of Economic Sanctions Assessed. A regression analysis was conducted to identify variables that were significant predictors of the total dollar amount of all economic sanctions assessed. Nine predictors were included in the analysis: charge, prior felony convictions, employment history, sex, race, age, marital/family relationships, number of months on probation, and number of sanctions assessed.

Results of the regression analysis showed that three variables were statistically significant predictors of total amount of economic sanctions assessed: *race* ($F=6.11$, $p<.05$), *months on probation* ($F=8.34$, $p<.005$), and *number of sanctions assessed* ($F=24.86$, $p<.0001$) (see Table 2). Post-hoc analyses using the Student-Newman-Keuls test showed that the mean total amount for whites ($M=\$1951.70$, $N=108$) was significantly greater than that for non-whites ($M=\$1383.90$, $N=138$). Although none of the differences were significant, further analyses revealed that for each of the three fee categories, whites were assigned a higher dollar amount per economic sanction than non-whites. Number of months on probation was also a statistically significant predictor of total amount of economic sanctions ($M=29.1$, $SD=13.6$, $range=1-52$). As number of months on probation increased, the total amount of economic sanctions assessed increased. As would be expected, the number of economic sanctions was a statistically significant predictor of the total dollar amount of sanctions. The variable sex approached traditional levels of statistical significance ($F=3.77$, $p<.0533$). Analysis of the sex variable showed that the mean total amount for women ($M=\$2128.70$, $N=52$) was higher than for men ($M=\$1500.30$, $N=194$). Additional analysis showed that a statistically significant difference ($t=2.07$, $p<.05$) between the average restitution fee for women ($M=\$1326.67$, $N=52$) than for men ($M=\$644.89$, $N=194$) contributed to this result.

Insert Table 2 here

Prediction of Total Amount of Economic Sanctions Paid. A regression analysis was conducted to identify variables that were significant predictors of total dollar amount of economic sanctions paid. Nine predictors were used: charge, prior felony convictions, employment history, sex, race, age, marital/family relationships, number of months on probation, and total amount due.

Results of the regression analysis showed that three variables were statistically significant predictors of the total dollar amount of economic sanctions paid: *race* ($F=6.19$, $p<.05$), *months on probation* ($F=29.18$, $p<.0001$), and *total amount due* ($F=279.99$, $p<.0001$) (see Table 3). Using the Student-Newman Keuls test, post-hoc analysis of the race variable showed that the mean total amount paid for whites ($M=\$1188.40$, $N=108$) was significantly greater than that for non-whites ($M=\$606.90$, $N=138$). As expected, total amount paid had a significant, positive relationship with both number of months on probation and total amount due. The means, standard deviations, and ranges of these two variables were reported earlier.

Insert Table 3 here

Prediction of Probation Outcome. A discriminant analysis was conducted to identify variables that predict whether a probationer was successful or unsuccessful. The results of the two-group stepwise discriminant analysis showed that four variables were statistically significant predictors of outcome. The variables retained by the stepwise function were *race*, *number of sanctions assessed*, *employment history*, and *total amount due*. These variables yielded a significant discriminant function (Wilks' Lambda = .93, $p<.0001$).

Frequency analyses showed that 39.8% of white probationers (N=108) and 65.9% of non-white probationers (N=138) had a negative probation outcome. Therefore, non-whites were significantly more likely to be unsuccessful on probation. Number of sanctions was also a significant predictor of outcome. Frequency analysis showed that as the number of sanctions assigned increased, the percentage of negative outcomes increased (see Table 4). Analysis of the employment history variable revealed that 70.8% of those with unstable employment histories (N=48) had negative probation outcomes, while 50.5% of those with stable employment histories (N=198) had negative terminations. Therefore, probationers with unstable employment histories were more likely to fail on probation. Analysis of the final statistically significant predictor, total amount due, showed that probationers assessed higher total dollar amounts of fees and fines were more likely to have negative outcomes.

Insert Table 4 here

DISCUSSION AND POLICY IMPLICATIONS

Do Economic Sanctions Discriminate Against Disadvantaged Groups? Ideally, persons associated with financially disadvantaged groups such as blacks, Hispanics, and those with employment problems should have lower fees imposed than their financially advantaged counterparts. In this respect, the decision making process involved in assignment of sanctions appeared less sensitive to client factors associated with ability to pay when compared with assessments of total fee. For example, there was no evidence that clients' legal and social characteristics predicted assignment of either restitution or attorney fees. Also, the percentage of those with unstable employment histories who were assessed miscellaneous fees (51.1%) is higher than that of those with stable

employment histories (41.9%). However, black and Hispanic probationers had significantly lower total fees imposed ($M=\$1384$) than whites ($M=\1952). *This suggests that the courts employed an informal financial screening procedure at sentencing for the purpose of setting lower fee payments for low income offenders.* Fee differentials notwithstanding, minorities were still only able to pay near half ($M= \$605$) that of whites ($M= \1188). These differences were also attributable to the higher failure rates of minorities (65.9%) compared to whites (39.8%), which in turn reduced the duration of probation supervision and amount of collected fees. Nevertheless, the data exhibited a general pattern of arbitrary or random assignment of economic sanctions and fee assessments which directly or indirectly discriminate against the poor.

Are Economic Sanctions Cost Effective? Most criminal justice professionals acknowledge that economic sanctions constitute an important source of revenue for their programs. The inability to enforce compliance may impair the agency's power to accomplish its mission. It is not surprising that this analysis showed that *victims received the highest average amount of fees ($M=\$1687$) collected by the probation department from successfully terminated cases* (see Table 5). Few will argue against offenders paying restitution. The collection of fines ($M=\$695$) and attorney fees ($M=\291) also helped offset the cost of administration of justice. From a service point of view, the probation supervision fee is critical because it accounts for half of the probation department's operating budget. In this study, the average supervision fee paid by terminating cases was \$422. *The average supervision fee paid represents 38 percent of the total average dollars ($M=\$1105$) collected.* However, it is important to note that total amount due was a significant predictor of negative outcome.

Insert Table 5 here

Do Economic Sanctions Contribute to Criminal Penalties'?

Theoretically, it could be assumed that there is a direct link between non-compliance to fee payments and technical revocation. While the sample used in this study had a negative outcome rate of 55 percent, *only nine percent of the total population had their probation revoked and were subsequently incarcerated as a result of failure to pay fees or failure to report.* Unfortunately, it is extremely difficult to ascertain the degree to which economic sanctions contribute to failure on probation because some judges are more lenient in enforcement than others. Another confounding factor is the degree to which economic sanctions act as an incentive for offenders to commit crimes to meet their fee obligations, thereby possibly contributing to criminal penalties when apprehended.

It was not in the scope of the present research to evaluate the extent to which specific types of economic sanctions or amount of fees deter offenders from repeating crimes or discourage others from engaging in illegal activity. In terms of specific deterrence, however, it is noteworthy that *the number of sanctions and total amount of fees imposed were found to be significant predictors of probation outcome.* As shown, the results clearly contradict the notion that the higher the “price”, the less likely offenders will recidivate. Forty nine percent of offenders with one economic sanction failed probation compared to ninety percent for those assessed four types of penalties.

Implications for the Criminal Justice Community. The fundamental purpose of economic sanctions is to provide society with a means by which offenders will contribute to paying the cost of administration of justice. Thus, it behooves jurisdictions highly dependent on economic sanctions to come up with equitable and innovative institutional arrangements to assure fair assessment of fees as well as quality service for all clients, regardless of socio-economic status. By failing to do so, community based programs

will promote inferior services for the poor, the rehabilitative mission of probation will be undermined, and the credibility of the courts with the public will be jeopardized. Mechanisms which can be institutionalized to eliminate abuses of economic sanctions include:

1. Using objective financial screening which sets fees in accordance to clients income, number of dependents, and severity of offense;
2. Employing an objective classification system to assign levels of service based on risk of probation failure and rehabilitation needs;
3. Offering community service alternatives to fee payments;
4. Introducing high technology to facilitate compliance (e.g., computerized billing, adjustment of fee schedules to changing financial status of clients);
5. Establishing a program through which employment specialists help offenders obtain jobs.

Future Research. Future research should concentrate on evaluating the trade off between the benefits of fees with respect to generating revenue and the ultimate social cost of enforcing compliance to economic sanctions. The negative consequences of imposing arbitrary or unfair fees are self evident. Revocations may increase, and more probationers may abscond. Expansion of economic sanctions may increase competition among fees and undermine the collection of supervision fees used to support services. Increasing clients' financial obligations for the purpose of sustaining services may seriously jeopardize the rehabilitative role of probation officers. These and other issues should be carefully reviewed before implementing various forms of economic penalties. A concerted effort should be directed toward the development of better financial screening procedures and more objective criteria to assess fees. In addition, the effects of service strategies such as

provision of financial counseling, utilization of employment specialists, and amendment of conditions of probation, on technical violations and fee collections must be evaluated. Finally, more attention should be given to the impact of economic sanctions on the financially disadvantaged offender.

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Table 1.Distribution of Fee Assessments by Economic Sanctions for Harris CountyAdult Felony Probation Sample *

<u>Economic Sanction Type**</u>	<u>N</u>	<u>Percent</u>	<u>Average</u>
Supervision fee	243	99%	\$ 423
Restitution fee	91	37%	\$ 2133
Attorney fee	72	29%	\$ 361
Fines	71	29%	\$ 780
Other fees	46	19%	\$ 495
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Total cases in sample	246		

* Includes 68 open cases

** Probationers may be assessed more than one sanction

*** Average supervision fee is for the life of the case or the duration of the study

Table 2.
Regression Analysis Predicting Total Amount of Economic Sanctions

Source	df	F
Charge	3	1.18
Prior felony convictions	1	0.92
Marital/Family relationships	1	0.08
Employment history	1	0.76
Sex	1	3.69
Race	1	6.11*
Age	1	0.50
Months on probation	1	8.34**
Number of sanctions	1	24.86***
*p<.05		R-squared= 0.177
**p<.005		N=246
***p<.0001		

Table 3.Regression Analysis Predicting Total Amount of Economic Sanctions Paid

Source	df	E
Charge	3	0.85
Prior felony convictions	1	0.03
Marital/Family relationships	1	1.19
Employment history	1	0.78
Sex	1	0.34
Race	1	6.19*
Age	1	0.00
Months on probation	1	29.18**
Total amount due	1	279.99**
*p<.05		R-squared=0.628
**p<.0001		N=246

Table 4.Relationship of Number of Economic Sanctions to Negative Probation Outcome.

Number of sanctions	N	percent failure
1	73	43.8
2	89	50.6
3	63	60.3
4	20	90.0
5	1	100.0

Table 5.Relationship Between Economic Sanctions and Revenue Recovery for Successful Termination Cases.

Sanction Type	N	Average Fee Due	Average Fee Paid	Percent Recovered	Average Case Recovery Paid
Sup. fee	72	\$ 430	\$ 422	98%	97%
Res. fee	14	1687	1687	100%	100%
Atty. fee	15	403	291	72%	74%
Fine	23	877	695	79%	79%
Other	10	329	178	54%	72%
Total	72	\$1168	\$1105	95%	95%